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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,775	07/24/2003	David F. Weakley	3839-002-27	7863

7590 10/07/2004

Supervisor, Patent Prosecution Services  
PIPER RUDNICK LLP  
1200 Nineteenth Street, N.W.  
Washington, DC 20036-2412

EXAMINER
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PRICE, RICHARD THOMAS JR

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/625,775

**Applicant(s)**WEAKLEY, DAVID F. *ST***Examiner**

Thomas Price

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07-24-2003.  
2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4, 9-13, 15, 16-21 and 23 are drawn to Unitary meat product, classified in class 452, subclass 149.
- II. Claims 5-8, 14 and 22 are, drawn to a process of preparing a unitary meat product, classified in class 452, subclass 149.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process can be practiced on a cow, lamb or goat, etc. The product can be made by a different process, such as boiling the poultry carcass for an extended period of time.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

IF THE APPLICANT ELECTS GROUP I, THEN THE FOLLOWING ELECTION OF SPECIES REQUIREMENT APPLIES.

This application contains claims directed to the following patentably distinct species of the claimed invention: Species I as claimed in claims 1-4, Species II as claimed in claims 9-13, Species III as claimed in claims 16-21.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are no claims which are generic to Group I.

IF THE APPLICANT ELECTS SPECIES I, THEN THE FOLLOWING ELECTION OF SUBSPECIES REQUIREMENT APPLIES.

This application contains claims directed to the following patentably distinct subspecies of the claimed invention: Subspecies 1a as claimed in claim 2, subspecies 1b as claimed in claim 3, subspecies 1c as claimed in 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic to Species I.

IF THE APPLICANT ELECTS SPECIES II, THEN THE FOLLOWING ELECTION OF SUBSPECIES REQUIREMENT APPLIES.

This application contains claims directed to the following patentably distinct subspecies of the claimed invention: Species 2a as claimed in claim 10, species 2b as claimed in claims 11 and 12, species 2c as claimed in claim 13.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 9 is generic to Species II.

IF THE APPLICANT ELECTS SPECIES III, THEN THE FOLLOWING ELECTION OF SUBSPECIES REQUIREMENT APPLIES.

This application contains claims directed to the following patentably distinct species of the claimed invention: Species 3a as claimed in claim 17, species 3b as claimed in claim 18, species 3c as claimed in claim 19 and species 3d as claimed in claim 21.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 16 and 20 are generic to Species III.

IF THE APPLICANT ELECTS GROUP II, THEN THE FOLLOWING ELECTION OF SPECIES REQUIREMENT APPLIES.

This application contains claims directed to the following patentably distinct species of the claimed invention: Species IIA as claimed in claims 5-8 and species IIB as claimed in claim 14.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are no claims generic to Group II.

IF APPLICANT ELECTS SPECIES IIA, THEN THE FOLLOWING ELECTION OF SUBSPECIES REQUIREMENT APPLIES.

This application contains claims directed to the following patentably distinct species of the claimed invention: Species 4a as claimed in claim 6, species 4b as claimed in claim 7, species 4c as claimed in claim 8.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 5 is generic to Species IIA.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35


U.S.C. 103(a) of the other invention.

A telephone call was made to Stephen Kelber on September 28, 2004 to request an oral election to the above restriction requirement, but did not result in an election being made.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 703-308-2694. The examiner can normally be reached on Monday through Friday from 8:30a.m. to 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Thomas Price  
Primary Examiner GAU: 3643

rtp